

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 02-0060
Indiana Corporate Income Tax
For the Years 1998 and 1999

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ISSUE

I. Income from Services Provided to Indiana Customers – Adjusted Gross Income Tax.

Authority: IC 6-3-2-2.2(e); 45 IAC 3.1-1-55; Black's Law Dictionary (7th ed. 1999).

Taxpayer argues that the Department erred in determining that money received from its Indiana customers for performing services should be included in the sales factor used in determining taxpayer's adjusted gross income tax liability.

STATEMENT OF FACTS

Taxpayer is an out-of-state business which provides insurance information services. Taxpayer provides these services to insurance companies and automobile repair shops. When an insured's automobile is involved in an accident and the insurance company decides that the vehicle is "totaled," the insurance company turns to taxpayer to find out the value of the totaled car. This is one of the services which taxpayer provides; it determines an authoritative value for wrecked cars.

Taxpayer runs its business from two out-of-state locations. Taxpayer has a computer data-base center in Illinois, and taxpayer has an operational center in South Dakota. According to taxpayer, when one of its customers requests a wrecked vehicle valuation, the services related to determining the valuation are performed "primarily in South Dakota and to a lesser extent in Illinois." According to the information available, taxpayer has employees working within this state. It hires employees to collect information on vehicles for sale within this state. In addition, taxpayer has a "direct sales force" and "independent sales representatives" who offer taxpayer's services to insurance companies and auto body repair shops.

The Department's audit of taxpayer's 1998 and 1999 records determined that the income received from Indiana customers constituted "Indiana sales . . . included in the sales factor." As a result, the audit concluded that taxpayer owed additional Indiana adjusted gross income tax. Taxpayer disagreed with that conclusion and submitted a protest. An administrative hearing was held, and this Letter of Findings results.

DISCUSSION

I. Income from Services Provided to Indiana Customers – Adjusted Gross Income Tax.

Taxpayer argues that income received from Indiana customers is not subject to the state's adjusted gross income tax. Taxpayer bases this argument on the ground that activities related to the performance of those services is conducted in South Dakota and Illinois. Specifically, taxpayer cites to 45 IAC 3.1-1-55 which states:

Gross receipts from transactions other than sales of tangible personal property shall be included in the numerator of the sales factor if the income producing activity which gave rise to the receipts is performed wholly within this state. Except as provided below if the income producing activity is performed within and without this state such receipts are attributable to this state if the greater proportion of the income producing activity is performed here, based on costs of performance.

Taxpayer concludes that the cost of producing and managing its specialized automobile information is incurred in South Dakota; as a result, its Indiana source income – money received from Indiana insurers and Indiana auto repair shops – should be apportioned to South Dakota under the “cost of performance rules.”

Under the rule cited by taxpayer, the issue is the location of the taxpayer's “income producing activity.” 45 IAC 3.1-1-55 states that the term, “income producing activity” means “the act or acts directly engaged in by the taxpayer for the ultimate purpose of obtaining gains or profits.” The rule states that a taxpayer's “[i]ncome producing activity is deemed performed at the situs of real, tangible and intangible personal property or the place where personal services are rendered.” Id.

Taxpayer is plainly in the business of providing “personal services” and is not in the business of selling property. The regulation states that a service provider's income is sourced to the place where the “personal services are rendered.” Id. The word “rendered” means “to transmit or deliver.” Black's Law Dictionary 1288 (7th ed. 1999).

Taxpayer assembles and manages the computerized automobile information in South Dakota and Illinois. However, the issue is not the management and storage of this information; rather the question at issue relates to the source of its income. Under 45 IAC 3.1-1-55, the “income producing activity” does not take place in South Dakota or Illinois. Instead, the “income producing activity” occurs at the place where taxpayer “renders” its information service to an Indiana customer.

In taxpayer's specialized business, the information taxpayer acquires and manages would have no value unless that information was offered to and accepted by an Indiana customer. The money taxpayer receives is not received by virtue of the activities which taxpayer conducts in Illinois and South Dakota. The money is received because the information is “rendered” to an Indiana customer.

The statute is straightforward. Under IC 6-3-2-2.2(e), “Receipts from the performance of fiduciary and other services are attributable to the state in which the benefits of the services are consumed.” Taxpayer receives money because it offers services to Indiana consumers who obtain the benefit of those services within this state. The Department is unable to accept the argument that the income is obtained because it performs activities in South Dakota and Illinois.

FINDING

Taxpayer’s protest is respectfully denied.

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